

1
2
3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
6

7 ADTRADER, INC., et al.,
8 Plaintiffs,
9 v.
10 GOOGLE LLC,
11 Defendant.

Case No. [17-cv-07082-BLF](#)

**ORDER DENYING PLAINTIFFS’
ADMINISTRATIVE MOTION FOR
LEAVE TO FILE SUR-REPLY**

[Re: ECF 121]

12
13 Before the Court is Plaintiffs’ Administrative Motion for Leave to File Sur-Reply in
14 Support of Opposition to Google LLC’s Motion to Dismiss (“Motion”) pursuant to Civil Local
15 Rule 7-11. *See* Motion, ECF 119-4. Defendant opposes Plaintiffs’ Motion. *See* Opp’n, ECF 123.
16 Plaintiffs “seek leave to present the Court with [purported new] evidence [], in advance of the
17 March 7, 2019 hearing” on Defendant’s motion to dismiss. *See* Motion at 1.

18 Plaintiffs motion for leave to file a sur-reply is DENIED. First of all, Civil Local
19 Rule 7-3(d) provides that, “[o]nce a reply is filed, no additional memoranda, papers or letters may
20 be filed without prior Court approval,” except to object to reply evidence or to provide a statement
21 of recent decision. Neither exception applies here. Second, while “new” evidence may be
22 grounds to file an amended complaint, the Court does not find that Plaintiffs have demonstrated
23 “good cause” otherwise warranting a sur-reply. *See, e.g., Hall v. City and County of San*
24 *Francisco*, 2017 WL 5569829, at *4 (N.D. Cal. Nov. 20, 2017) (denying plaintiff’s request to file
25 sur-reply where defendant’s reply did not raise new arguments or evidence). Indeed, Plaintiffs do
26 not argue that Defendant’s reply serves as a basis for the proposed sur-reply, but instead
27 “extensive new facts” arising from discovery. *See* Motion at 1, 5. New evidence is not
28 appropriately submitted in a sur-reply. *See Rodgers v. Chevys Restaurants, LLC*, 2015

1 WL 909763, at *6 (N.D. Cal. Feb. 24, 2015) (denying motion for leave to file sur-reply containing
2 new evidence on the basis that it is “impermissib[e] [] to present new evidence” in a sur-reply).

3 Moreover, Plaintiffs’ proposed sur-reply (ECF 119-6) completely ignores the civil local
4 rules and the undersigned’s standing order with respect to text and footnoting requirements. *See,*
5 *e.g.*, Civ. L.R. 3-4(c)(2); Standing Order re Civil Cases § E.5. A two-page sur-reply with no
6 exhibits may be appropriate in rare circumstances; Plaintiffs’ proposed nine-page, single-spaced,
7 non-conforming sur-reply is surely not.

8 For the foregoing reasons, Plaintiffs’ motion for leave to file a sur-reply at ECF 121 is
9 DENIED.

10
11 **IT IS SO ORDERED.**

12 Dated: March 4, 2019

13 

14 BETH LABSON FREEMAN
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26
27
28